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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. **78-5095**

TOMMY L. HUNT, Petitioner,

vs.

STATE OF MISSOURI, Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE MISSOURI COURT OF APPEALS

TOMMY L. HUNT,
Petitioner,
LEE M. NATION,
KEVIN LOCKE,
Assistant Public Defenders

Office of the Public Defender
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(816)474-5811

Counsel for Petitioner

I N D E X

Table of Citations	1
Opinion Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions Involved	3
Statement	3
How Federal Questions are Presented	3
Reasons for Granting the Writ	5
Conclusion	9
Appendix A	10
Appendix B	11

TABLE OF CITATIONS

CASES:

Taylor v. Louisiana, 419 U.S. 522 (1975).
Hoyt v. Florida, 368 U.S. 57 (1961).
State v. Billy Duren, 556 S.W.2d 11 (Mo. banc 1977).
State v. Gethers, 227 S.E.2d 832 (Ga. App. 1976).
Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir. 1976).

STATUTES:

Sixth Amendment, United States Constitution
Fourteenth Amendment, United States Constitution
Article I, §22(b), Missouri Constitution
§497.130, Revised Statutes of Missouri
New York Judiciary Law §549(7)
Conn. Gen. Stat. Rev. §51-218, -219
Ga. Code Ann. §59-112(6)
La. Stat. Ann. §13-3055
Okla. Stat. Ann Title 38, §28
R. I. Gen. Laws Ann. §9-9-11
Utah Code Ann. §78-46-10(14)

PETITION FOR A WRIT OF CERTIORARI
TO THE MISSOURI SUPREME COURT

Petitioner, Tommy L. Hunt, prays that a writ of certiorari issue to review the judgment and opinion of the Missouri Court of Appeals entered in the above-entitled case on July 31, 1978.

OPINION BELOW

The opinion and decision of the Missouri Court of Appeals is reported at 570 S.W.2d 777. A copy of the opinion appears in Appendix A attached hereto.

JURISDICTION

The opinion and judgment of the Missouri Court of Appeals was entered July 31, 1978. Thereafter, a motion for rehearing was filed on August 15, 1978. See, Missouri Rule of Court 84.17. The motion was overruled August 28, 1978. An application to transfer the cause to the Missouri Supreme Court was filed September 12, 1978. Missouri Rule of Court 83.03. On October 10, 1978, said application was denied by the Missouri Supreme Court, making the opinion of the Court of Appeals the final judgment of the highest court in the State of Missouri.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3).

QUESTION PRESENTED

WHETHER MISSOURI'S STATUTORY AND CONSTITUTIONAL SCHEME FOR THE SELECTION OF PETIT JURORS -- WHICH GRANTS WOMEN AN AUTOMATIC EXEMPTION BASED SOLELY ON SEX -- DENIED PETITIONER HIS RIGHT TO TRIAL BY JURY AND DUE PROCESS OF LAW AS MANDATED AND INTERPRETED BY THIS COURT'S OPINION IN TAYLOR V. LOUISIANA, 419 U.S. 522 (1975).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution:

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,"

Fourteenth Amendment

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Petitioner, Tommy L. Hunt, was charged by indictment with the crimes of kidnapping and sodomy. Jury trial was held in the Jackson County, Missouri Circuit Court (Hanna, J.) in Kansas City, Missouri. Verdicts of guilt were returned and Petitioner was sentenced to serve respective two (2) and five (5) year terms in the Missouri Division of Corrections.

HOW FEDERAL QUESTION
IS PRESENTED

1. Prior to trial, Petitioner filed a motion to quash the jury panel on the basis that women were systematically excluded from jury service. In support of this motion, petitioner introduced into evidence a stipulation of facts entered into by both the defense and the State. Briefly, the stipulation outlined the jury selection system used in Jackson County, Missouri, which is as follows: potential jurors are randomly selected from the Jackson County voter registration lists; these persons are sent questionnaires to

determine their eligibility for jury service. By statute, this questionnaire prominently states:

TO WOMEN:

The Constitution permits women to elect to serve or not to serve as jurywomen. Any woman who elects not to serve will fill out this paragraph and mail this questionnaire to the jury commissioner at once. It will not be necessary to answer the other questions.

I elect not to perform jury service.

This paragraph is immediately followed by a signature line. Those questionnaires returned showing no exemption were placed in the jury wheel. Also stipulated to was the fact that the 1976 jury wheel was 29.1% female. Each week, names are randomly selected for jury service; these persons are then sent a summons for jury service. This summons reads on its reverse side:

Women, if you do not wish to serve, return this summons to the Judge named on the reverse side as quickly as possible.

Petitioner introduced statistics relating to the number of jurors summoned, and those actually appearing for service, during the months of January through June, 1976. Additionally, the stipulation showed that of 30,165 women sent questionnaires (for the 1976 jury wheel), fully 21,884 (72.6%) indicated an unwillingness to serve as jurors by signing the line under the last paragraph of the questionnaire, which informed them of their ability to refuse to serve because of their sex. Lastly, census evidence was introduced showing Jackson County to be 54% female. An example of the stipulation and its supporting documents is attached hereto as Appendix B and made a part hereof by reference.

At the close of Petitioner's presentation of evidence on the Motion, the State offered no evidence and the Motion was overruled.

2. Subsequent to his trial, petitioner filed a timely motion for new trial alleging the instant allegation. A timely

appeal was then prosecuted to the Missouri Court of Appeals, Kansas City District, which affirmed petitioner's conviction by opinion dated July 31, 1978. Motion for rehearing was overruled August 28, 1978. Application to transfer the cause to the Missouri Supreme Court was denied October 10, 1978. The issue raised herein was raised and argued before the trial court and the Missouri Court of Appeals, whose opinion has now become the final judgment of the Missouri Supreme Court with the denial of the application to transfer. Missouri Rule of Court 83.03.

REASONS FOR GRANTING
THE WRIT

The opinion and decision of the Missouri Supreme Court in the instant case is in direct conflict with past decision of this Court, various federal courts of appeals and several state high courts. Specifically, Petitioner contends the instant opinion is in conflict with Taylor vs. Louisiana, 419 U.S. 522 (1975) and thus, cannot stand. Taylor held Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure (since repealed) violative of Taylor's due process rights guaranteed by the XIV Amendment to the United States Constitution.

The Louisiana law is reproduced here for the convenience of the Court:

Article VII, Louisiana Constitution

§41. Selection of jurors; women jurors; trial by judge; trial by jury.

The Legislature shall provide for the selection and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be

subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

Louisiana Code of Criminal Procedure

Article 402. Service of women as jurors.

A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service.

The United States Supreme Court in Taylor re-examined the question of automatic exclusion of women from the juries previously decided by that Court in Hoyt v. Florida, 368 U.S. 57, 7 L.Ed.2d 118, 82 S.Ct. 159 (1961) and they reached a different result. Accordingly, the Court stated:

"Accepting as we do however, the view that the VI Amendment affords the Defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be excluded or given automatic exemptions based solely on sex if the consequences are that criminal jury venires are almost totally male."

(42 L.Ed.2d 690 at 702) [emphasis added]

The question presented herein then whether Missouri offers an "automatic exemption based solely on sex" and if, "the

consequences are that criminal jury venires are almost totally male."

The Missouri Constitution, Article I, Section 22(b) states: "No citizen shall be disqualified from jury service because of sex, but the court shall excuse any woman who requests exemption therefrom before being sworn as a juror." This Article is implemented by Section 497.130, Missouri Revised Statutes (1974), which section allows women to "elect to serve or not to serve as jury women."

When placed side by side and examined, the Missouri system and the Louisiana system (later changed) both offer an absolute exemption to jury service based strictly upon gender. The difference being only that in Louisiana the woman must affirmatively opt for service while her Missouri sister must affirmatively choose not to serve.

The Appellant's argument is much better stated by the United States Supreme Court's final paragraph in the Taylor opinion:

". . . but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof."

Petitioner concludes that "(t)he States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions. . ." Taylor v. Louisiana, at 538. Petitioner however, does not believe that a blanket exemption for women is a reasonable exemption. Indeed, as pointed by Mr. Justice Seiler in his dissenting opinion in State v. Billy Duren, 556 S.W.2d 11, 24, n.4 (1977):

"The federal court (the United States District Court for the Western District of Missouri) provides for excuse on request by a woman charged with care of minor children without adequate domestic help."

Petitioner maintains that this is a reasonable exemption for women and would not serve to deny an accused his constitutional right to a representative jury: in the federal court in Kansas City, 53% of the persons on jury wheel are women and 39.8% of the actual jurors chosen were women. 556 S.W.2d at 24. This data can be contrasted with the Missouri courts: 29% of the persons on the wheel are women; seldom over 15% of the persons appearing for jury service are women; and often, the procedure results in juries which are all male.

Since Taylor, several states have been faced with challenges to exemptions to women. All, except Missouri, have changed the exemption by either statute or court decision, see, e.g. State v. Gethers, 227 S.E.2d 832 (Ga.App.1976); Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir.1976); New York Judiciary Law 549(7); Conn.Gen. Stat.Rev. §51-218, 219; Ga.Code Ann. §59-112(6); La.Stat. Ann. §13-3055; Okla.Stat. Ann. Title 38 §28; Rhode Island Gen.Laws Ann. §9-9-11; Utah Code Ann. §78-46-10(14). Missouri remains the only state with an automatic exemption for women. Further, this exemption causes gross underrepresentation of women on jury panels. (See attached exhibits as to the women appearing for jury service). The instant opinion cannot stand as a correct interpretation of this Court's opinion in Taylor. Unlike the Missouri Supreme Court, Petitioner does not believe Taylor stands for the proposition that any percentages of women on jury panels, higher than those found in Taylor, is constitutionally permissible; instead Taylor condemns jury mechanisms which deny an accused his right to a jury drawn from a reasonable cross-section of society. The Missouri jury selection system is of such a breed.

Accordingly, a Writ of Certiorari should issue to review the opinion of the Missouri Supreme Court affirming Petitioner's conviction.

CONCLUSION

WHEREFORE, Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Missouri Court of Appeals.

Tommy Hunt
Petitioner

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Counsel for Petitioner

A copy of the above and foregoing was mailed, postage prepaid, on this 3rd day of January, 1979, to Attorney General John Ashcroft, Office of the Attorney General, Supreme Court Building, Jefferson City, Missouri, 65101.

Lee M. Nation
LEE M. NATION

Kevin Locke
KEVIN LOCKE

APPENDIX A

OPINION RENDERED BY THE MISSOURI COURT OF APPEALS,
KANSAS CITY DISTRICT ON JULY 31, 1978.

APPENDIX A IS THE OPINION OF THE COURT IN
STATE V. HUNT AND CAN BE FOUND AT
570 S.W.2d 777. IT HAS NOT BEEN FILMED HERE.

APPENDIX B

STIPULATION ENTERED INTO BY PARTIES AND DOCUMENTS

IN THE CIRCUIT COURT OF MISSOURI, SIXTEENTH JUDICIAL CIRCUIT

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 v.) Docket
) Division No.
)
) No.
 Defendant.)

STIPULATION

Comes now the defendant, by counsel,
 , Assistant Public Defender, and the state,
 by counsel, Assistant Prosecuting Attorney,
 and stipulate and agree as follows:

1. All persons summoned for jury duty in the year 1976,
 including the persons summoned as prospective jurors in this case,
 were selected from a jury wheel created in the following manner:

- a. Under the direction of the Circuit Court Administrator and the Jury Commissioner, the Department of Court Computer Services created a computer data file containing the name, address, sex and ward/precinct number of every fourth registered voter in Jackson County, Missouri, in the records of the Kansas City Board of Election Commissioners and the Independence Board of Election Commissioners. An Official Notice and Questionnaire in the form prescribed by Section 497.130 of the Missouri Revised Statutes was mailed to each person whose name was selected from the aforesaid list of registered voters.
- b. Completed questionnaires were received in return mail by employees of the Department of Court Computer Services. The questionnaires are scrutinized to determine if any of the responses shown on the questionnaire indicated that that person was entitled to exemption or to be excused from jury duty. The names of those persons who appeared to be entitled to exemption or to be excused from jury duty were then removed from the role of those persons who were sent questionnaires. The list of remaining names constitutes the jury wheel of 1976.
- c. Attached hereto as Exhibit "A" is a copy of a "Summary of Questionnaire Processing for the 1976 Jury Wheel" prepared by Robert J. Kramer, Director of Computer Services, which is a summary of the number of questionnaires processed in the compilation of the 1976 Jury Wheel for Jackson County, and said Exhibit "A" may be admitted in evidence in this case.

- d. Attached hereto as Exhibit "B" is a copy of a memorandum showing the number of males whose names are included in the 1976 Jury Wheel for Jackson County and the number of females whose names are included in the 1976 Jury Wheel for Jackson County. Exhibit "B" and the information shown in that exhibit may be admitted in evidence in this case.

2. Prospective jurors are summoned as follows:

- a. Prior to the week for which potential jurors are to be summoned, the presiding judge and the jury commissioner determine the number to be summoned. This number is provided to the Department of Court Computer Services which uses a computer programmed to randomly select the designated number of potential jurors from the 1976 Jury Wheel. The persons so selected are mailed a jury summons identical to the form of summons attached and marked Exhibit "C", which exhibit is hereby incorporated by reference.
- b. Attached Exhibit "D" (pages 1 through 7), which exhibit is hereby incorporated by reference, is an analysis of the sex and service of potential jurors summoned for each jury week in 1976 through the week of July 26, 1976. The figures contained in Exhibit "D" may be admitted in evidence in this case.

3. On February 4, 1976, the Office of the Public Defender for the Sixteenth Judicial Circuit was authorized to obtain from the Jackson County Circuit Court Administrator all "Official Notice and Questionnaire" forms which were received, processed and used to compile the 1976 Jury Wheel for Jackson County. On February 11, 1976, the Office of the Public Defender received all such questionnaires from the Office of the Circuit Court Administrator.

The questionnaires were so sorted to separate those sent to males from those sent to females. Questionnaires sent to females were sorted to determine the following information and counted in each category thereby obtaining the following totals:

<u>Category</u>	<u>Total Number of Questionnaires</u>
Information on the face of the questionnaire showing that the woman was no longer a resident of Jackson County, Missouri.	817
Female government employees who indicated they would not serve	21
Female professionals, including clergy, who indicated they would not serve	93

Females who indicated prior jury service
on the questionnaire (Line 12) but
indicated they were willing to serve 132

Females who indicated prior jury service
but were unwilling to serve 20

Female teachers who indicated they would
not serve 437

Questionnaires indicating that the
addressee was in a nursing home 50

Questionnaires indicating in Line 11 that
the woman was physically unable to serve
or some other written indication of
physical infirmity such as loss of hear-
ing, or who indicated they were ineligible
under the statutes 1,106

Questionnaires showing that the woman was
over 65 years of age and with no
affirmative indication of willingness
to serve 2,059

Questionnaires showing that the woman was
under 21 years of age 151

Questionnaires returned with the notation
that the addressee was deceased 53

Questionnaires indicating that the woman
declined to serve for no other apparent
reason than the female exemption 21,884

Questionnaires with affirmative indi-
cations that the woman would serve, or
without any indication of refusal 3,342

4. The Court may take judicial notice of the Department of
Commerce, Bureau of Census, statistics contained in attached
Exhibit "E", which exhibit is hereby incorporated by reference,
entitled "General Population Characteristics."

Date

Assistant Prosecuting Attorney
Jackson County Courthouse
415 East 12th Street
Kansas City, Missouri 64106
Counsel for Plaintiff

Date

Assistant Public Defender
1802 Traders Building
1125 Grand Avenue
Kansas City, Missouri 64106
474-5811
Counsel for Defendant



CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

415 EAST 12TH STREET

KANSAS CITY, MISSOURI 64105

AUSTIN E. VAN BUSKIRK
COURT ADMINISTRATOR

December 29, 1975

ROBERT J. KRAMER
DIRECTOR OF COMPUTER SERVICES
816-231-3553

To: Austin E. Van Buskirk
Court Administrator

Re: 1976 Jury Wheel

Attached is the summary of questionnaire processing for
the 1976 jury wheel. As you can see, the new wheel will con-
tain a total of 27,868 names. If you need further explanation
of the attached summary please let me know.

Robert J. Kramer
Director of Computer Services

RJK:bE

cc: John Fitzgerald

EXHIBIT 51

AUG 12 1976

MAE RYALS

Exhibi
"A"

SUMMARY OF QUESTIONNAIRE PROCESSING
FOR THE 1976 JURY WHEEL

Approximate Registered Voters	<u>260,813</u>
Questionnaires Mailed (1/4 voter rolls)	65,207
Deceased and/or Non-Deliverable	2,451
Ineligible/Elected Not To Serve	<u>34,888</u>
Total Records Removed From File	<u>37,339</u>
1976 Jury Wheel	<u>27,868</u>
Changes to File	
Name Changes	167
Address Changes	<u>2,141</u>
Total Changes	<u>2,308</u>
Total Questionnaires Returned	<u>57,457</u>
Number of Questionnaires Not Returned	<u>7,750</u>

MEMORANDUM

June 15, 1976

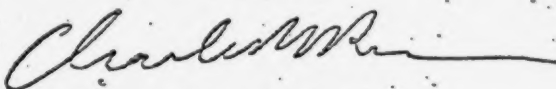
TO: Thomas M. Larson
FROM: Charlie Rogers
RE: Jury Wheel Count

I counted the males and females on the Jackson County Jury Wheel List for 1976, and obtained the following results:

Males	19,755
Females	8,099
Total	<u>27,854</u>

This figures out to slightly less than 29.1% of the persons on the jury wheel list who are female.

I spent a total of 13 hours on this project.


Charles M. Rogers
Certified Law Intern

DO NOT WRITE ABOVE THIS LINE
FOR INTERNAL USE ONLY

(Not a Summons)

L

DEFENDANT'S
EXHIBIT
21
5/27/67

Enter change

of home address here:

(Number and Street or Rural Route)

.....
(City or Town)

.....
(Zip Code)

You have been selected under the provisions of the Missouri statutes for jury service.

This questionnaire should be returned immediately.

The laws of the State of Missouri provide that if you do not answer and return this questionnaire, you are in violation of the law and may be cited for contempt.

The laws of the State of New York are subject to citation for contempt.

The law further provides that if you knowingly and falsely answer any of the questions herein contained, you may be guilty of a misdemeanor.

The law requires your name to be placed in the jury wheel if answer is not received promptly.

BY ORDER OF THE BOARD OF JURY SUPERVISORS, UNDER AND BY AUTHORITY OF LAW

ANN CLARDY.

Jury Commissioner

- (1) Please state your sex. Male (.....) Female (.....)

(If you are a female and do not wish to serve, see bottom of questionnaire)

- (2) Name of husband or wife.

- (3) Are you over sixty-five years of age? Yes (.....) No (.....)

Date of Birth. Month.....: Day.....: Year.....

- (4) Are you a member of the fire company or police department?

Yes (.....) No (.....). (If your answer is "yes", state which.)

- (5) Are you actually exercising the functions of clergyman or any professor or other teacher of any school of learning? Yes (.....) No (.....). (If your answer is "yes", state where you are so engaged.)

- (6) Are you a registered and licensed osteopathic physician, veterinarian or chiropractor? Yes (.....) No (.....).
(If your answer is "yes", state which.)

- (7) If you are a female, or if your answer to any of the above questions 3, 4, 5 and 6, is "yes", then under the law of Missouri, you cannot be compelled to serve as a juror, so state if you will serve. Yes (.....) No (.....).

- (8) Are you actually engaged in the practice of law, medicine or dentistry? Yes (.....) No (.....) (If so, please state which profession.).....

- (9) Are you a member on active duty with any branch of the Armed Forces of the United States? Yes (.....)
No (.....).

- (10) Is the address shown on the questionnaire correct? Yes (.....) No (.....). (If your answer is "no", state present address.)

- (11) Are you physically able to serve? Yes (.....) No (.....). (If not, attach physician's or authorized Christian Science practitioner's statement or you will be called.)

- (12) Have you served within the last year? Yes (.....) No (.....). (This will be checked if your answer is "yes".)

Signature _____

TO MEN OVER 65 YEARS OF AGE:

If you are over sixty-five and elect not to serve, fill out this paragraph and mail questionnaire at once to jury commissioner. It will not be necessary to answer the other questions.

Give date of birth.

Day

Month

Year

I elect not to do jury service.

Signature _____

TO WOMEN:

The constitution permits women to elect to serve or not to serve as jurywomen. Any woman who elects not to serve will fill out this paragraph and mail this questionnaire to the jury commissioner at once. It will not be necessary to answer the other questions.

I elect not to perform jury service.

Signature _____

**RETURN THIS
QUESTIONNAIRE
WITHIN 10 DAYS.**

Exhibit
"C"

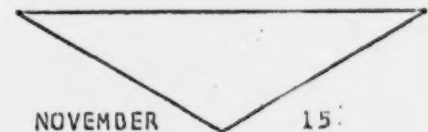
IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

Summons for Jury Service

To

YOU ARE HEREBY SUMMONED to appear before the Honorable
PAUL E. VARDEMAN, Judge of DIVISION 03 of the
Circuit Court of Jackson County, Missouri IN KANSAS
CITY AT 12TH & OAK IN RM 301, ON MONDAY THE 15
day of NOVEMBER, 1976 AT 8:15 o'clock AM to serve as a
juror until discharged.

IF YOU FAIL TO APPEAR YOU MAY BE HELD IN CONTEMPT OF COURT
BRING THIS SUMMONS WITH YOU. JOHN R. FITZGERALD
PLEASE READ THE INSTRUCTIONS ON REVERSE SIDE. Jury Commissioner
(over)



NOVEMBER 15

PLEASE BRING THIS ENTIRE CARD WITH
YOU WHEN YOU APPEAR AT THE JURY
ASSEMBLY ROOM.

01950

INSTRUCTIONS

Please note the Judge and location on the front side of this card. You must report to him on the day and at the time specified.

No male juror shall be excused from service except for sufficiently valid reasons to be APPROVED BY THE JUDGE or upon PERSONAL APPEARANCE BEFORE SAID JUDGE AS SHOWN ON THE FRONT OF THIS CARD. Applications for excuses must be presented to said Judge on or before 12 o'clock noon on the Thursday preceeding the date which you are to appear as shown on the reverse side.

A physically disabled juror must show that to appear and serve would endanger his health. Such proof must be in the form of a doctor's certificate and be presented to the Judge the same as other applications.

Women, if you do not wish to serve, return this summons to the Judge named on the reverse side as quickly as possible.

Men, if you are over 65 years of age and do not wish to serve, return this summons to the Judge named on the reverse side the same as other applications, before 12 noon Thursday preceeding your date of service. Give your date of birth in your request.

Non-Residents, if you are no longer a resident of Jackson County, Missouri, you are not eligible for jury service. Please let us know you have moved by returning this summons promptly giving your present address.

All persons duly summoned by mail as Jurors may be attached for non-appearance and fined by the court for contempt.

We regret that we are unable to furnish parking for jurors.
Please bring this Summons with you when you appear at the Jury Assembly Room.

JURY COMSSR: 6500/ JURY COMSSR: 6500/9775

TABLE OF JURORS SUMMONED IN JACKSON COUNTY FOR
SERVICE IN KANSAS CITY - JANUARY, 1976

WEEK	JURORS SUMMONED		EXCUSED OR DECEASED	DEFERRED	ABSENT	APPEARED FOR SERVICE	
1/5/76	Male	247 (75.5%)	70	19	6	152	(92.7%)
	Female	80 (24.5%)	49	2	17	12	(7.3%)
	Total	327	119	21	23	164	
1/12/76	Male	260 (76.5%)	64	25	24	147	(88.6%)
	Female	80 (23.5%)	48	1	12	19	(11.4%)
	Total	340	112	26	36	166	
1/19/76	Male	245 (76.3%)	71	18	14	142	(87.1%)
	Female	76 (23.7%)	45	0	10	21	(12.9%)
	Total	321	116	18	24	163	
1/26/76	Male	234 (72.0%)	85	12	15	122	(81.9%)
	Female	91 (28.0%)	44	2	18	27	(18.1%)
	Total	325	129	14	33	149	
TOTALS							
FOR	Male	986 (75.1%)	290	74	59	563	(87.7%)
JANUARY	Female	327 (24.9%)	186	5	57	79	(12.3%)
1976	Total	1,313	476	79	116	642	

TABLE OF JURORS SUMMONED IN JACKSON COUNTY FOR
SERVICE IN KANSAS CITY - FEBRUARY, 1976

WEEK OF		JURORS SUMMONED	EXCUSED DECEASED	DEFERRED	ABSENT	APPEARED FOR SERVICE
2/2/76	Male	224 (70.9%)	64	26	16	118 (79.7%)
	Female	92 (29.1%)	46	4	12	30 (20.3%)
	Total	316	110	30	28	148
2/9/76	Male	243 (73.6%)	66	18	23	136 (82.9%)
	Female	87 (26.4%)	48	1	10	28 (17.1%)
	Total	330	114	19	33	164
2/17/76	Male	120 (67.1%)	35	13	4	68 (81.0%)
	Female	59 (32.9%)	37	1	5	16 (19.0%)
	Total	179	72	14	9	84
2/23/76	Male	235 (69.9%)	59	19	7	150 (84.7%)
	Female	101 (30.1%)	53	2	19	27 (15.3%)
	Total	336	112	21	26	177
TOTALS FOR FEBRUARY 1976	Male	822 (70.8%)	224	76	50	472 (82.4%)
	Female	339 (29.2%)	184	8	46	101 (17.6%)
	Total	1,161	408	84	96	573

TABULATION OF DATA OBTAINED FROM LISTS OF JURORS SUMMONED FOR MARCH, 1976.

inning:

ch 1,
6.

	Jurors Summoned	(%)	Excused	Deferred	Not Appearing	Appeared For Service	(%)
Female	90	(72.0%)	56	2	13	19	(13.1%)
Male	231	(28.0%)	64	21	20	126	(86.9%)
Total	321		120	23	33	145	

ch 8,
6.

Female	107	(31.9%)	64	2	9	32	(21.8%)
Male	228	(68.1%)	67	37	9	115	(78.2%)
Total	335		131	39	18	147	

ch 15,
6.

Female	107	(31.2%)	62	3	17	25	(15.2%)
Male	228	(68.8%)	58	23	15	140	(84.8%)
Total	343		120	26	32	165	

ch 22,
6.

Female	50	(26.0%)	27	1	8	14	(15.6%)
Male	142	(74.0%)	40	17	9	76	(84.8%)
Total	192		67	18	17	90	

ch 29,
6.

Female	99	(28.6%)	65	3	11	20	(12.5%)
Male	247	(71.4%)	70	27	10	140	(87.5%)
Total	346		135	30	21	160	

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ch, 1976.

Female	453	(29.5%)	274	11	58	110	(17.0%)
Male	1,084	(70.5%)	299	125	63	597	(83.0%)
TOTAL	1,537		573	136	121	707	

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, APRIL, 1976.

week of		Summoned	Excused	Deferred	Not Appearing	Appeared For Service
4/5/76	Male	248 (71.1%)	65	29	15	139 (79.9%)
	Female	101 (28.9%)	51	1	14	35 (20.1%)
	Total	349	116	30	29	174
4/12/76	Male	254 (72.2%)	72	21	13	148 (83.1%)
	Female	98 (27.8%)	51	0	17	30 (16.9%)
	Total	352	123	21	30	178
4/19/76	Male	235 (70.6%)	67	21	12	135 (86.5%)
	Female	98 (29.4%)	54	2	21	21 (13.5%)
	Total	333	121	23	33	156
4/26/76	Male	121 (74.7%)	29	14	6	72 (90.0%)
	Female	41 (25.3%)	23	0	10	8 (10.0%)
	Total	162	52	14	16	80
TOTALS FOR APRIL, 1976	Male	858 (71.7%)	233	85	46	494 (84.0%)
	Female	338 (25.3%)	179	3	62	94 (16.0%)
	Total	1196	412	88	108	588

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, MAY, 1976

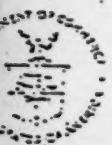
Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
5/3/76	Male	240	(72.7%)	60	17	15	148 (87.1%)
	Female	90	(27.3%)	48	2	18	22 (12.9%)
	Total	330		108	19	33	170
5/10/76	Male	236	(72.7%)	52	27	12	145 (89.0%)
	Female	89	(27.3%)	56	0	15	18 (11.0%)
	Total	325		108	27	27	163
5/17/76	Male	231	(72.6%)	56	29	12	134 (86.5%)
	Female	87	(27.4%)	52	2	12	21 (13.5%)
	Total	318		108	31	24	155
5/24/76	Male	239	(74.5%)	53	26	13	147 (85.5%)
	Female	82	(25.5%)	43	1	13	25 (14.5%)
	Total	321		96	27	26	172
Totals for May, 1976	Male	946	(73.3%)	221	99	52	574 (87.0%)
	Female	348	(26.7%)	199	5	58	86 (13.0%)
	Total	1,294		420	104	110	660

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, JUNE, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
6/1/76	Male	217	(71.6)	54	29	12	122 (82.4%)
	Female	86	(28.4%)	42	4	14	26 (17.6%)
	Total	303		96	33	26	148
6/7/76	Male	255	(76.8%)	51	35	13	156 (86.2%)
	Female	77	(23.2%)	41	1	10	25 (13.8%)
	Total	332		92	36	23	181
6/14/76	Male	124	(70.1%)	25	18	5	76 (87.4%)
	Female	53	(29.9%)	33	1	8	11 (12.6%)
	Total	177		58	19	13	87
6/21/76	Male	254	(75.8%)	77	33	10	134 (92.4%)
	Female	81	(24.2%)	50	2	18	11 (7.6%)
	Total	335		127	35	28	145
6/28/76	Male	258	(75.4%)	60	40	19	139 (84.2%)
	Female	84	(24.6%)	47	0	11	26 (15.8%)
	Total	342		107	40	30	165
Totals for June, 1976							
	Male	1,108	(74.4%)	267	155	59	627 (86.4%)
	Female	381	(25.6%)	213	8	61	99 (13.6%)
	Total	1,489		480	163	120	726

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, JULY, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
7/6/76	Male	241	(76.0%)	74	23	12	132 (89.2%)
	Female	76	(24.0%)	50	1	9	16 (10.2%)
	Total	317		124	24	21	148
7/12/76	Male	244	(73.5%)	79	27	12	126 (86.3%)
	Female	88	(26.5%)	57	1	10	20 (13.7%)
	Total	332		156	28	22	146
7/19/76	Male	216	(74.5%)	53	33	14	116 (87.9%)
	Female	74	(25.5%)	41	4	13	16 (12.1%)
	Total	290		94	37	27	132
7/26/76	Male	136	(70.8%)	39	17	5	75 (78.1%)
	Female	56	(29.2%)	28	2	5	21 (21.9%)
	Total	192		67	19	10	96
Totals for July, 1976.							
	Male	837	(74.0%)	245	100	43	449 (86.0%)
	Female	294	(26.0%)	176	8	37	73 (14.0%)
	Total	1,131		421	108	80	522

General
Population
Characteristics

MISSOURI

1970
CENSUS OF
POPULATIONExhibit
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Table 35. Age by Race and Sex, for Counties: 1970-Continued

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Counties	1970 population								1970 population							
	All races				White				All races				White			
	Male		Female		Male		Female		Male		Female		Male		Female	
	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	
HOWARD																
Under 1 year	10 561	5 107	5 454	4 817	4 922	479	519	13 339	23 321	31 411	12 110	11 317	11 950	30	37	
1 year	140	63	77	51	61	7	11	153	353	199	184	187	187	—	—	
2 years	144	72	72	55	60	6	8	152	342	185	157	183	157	—	—	
3 years	135	60	75	51	61	9	14	177	320	143	172	148	167	—	—	
4 years	133	68	64	59	55	9	13	187	322	168	154	167	153	—	—	
5 years	150	86	64	73	57	13	7	200	352	159	192	155	191	—	—	
6 years	153	86	77	70	67	15	8	193	332	176	176	173	171	—	—	
7 years	175	101	74	83	67	18	13	199	403	199	223	193	261	—	—	
8 years	177	97	80	80	68	17	12	222	436	215	191	214	196	—	—	
9 years	189	95	94	87	81	8	13	172	432	222	220	232	217	—	—	
10 years	173	87	86	73	77	14	9	159	458	220	233	217	234	—	—	
11 years	182	90	92	81	80	9	11	159	481	251	232	248	225	1	2	
12 years	189	102	87	87	79	14	8	177	472	238	234	237	231	1	1	
13 years	178	90	88	80	76	10	12	182	473	240	233	231	231	1	1	
14 years	190	95	94	80	79	16	15	182	483	265	218	254	215	—	—	
15 years	194	91	103	81	95	9	8	186	539	272	236	289	233	—	—	
16 years	197	101	96	86	86	15	9	148	443	221	215	226	214	1	—	
17 years	181	93	88	80	79	13	9	159	466	247	219	244	217	1	—	
18 years	182	101	81	88	69	13	12	152	444	215	229	214	228	—	—	
19 years	254	132	122	122	123	9	9	261	367	172	195	172	191	—	—	
20 years	291	134	157	127	148	7	8	261	321	164	157	163	157	—	—	
21 years	293	135	158	125	148	8	10	253	272	118	153	116	152	1	1	
22 years and over	4 633	3 122	3 516	2 878	3 207	240	321	4 875	15 012	7 092	7 920	7 028	7 950	14	18	
Under 5 years	705	354	351	309	299	44	51	940	1 637	848	839	841	834	—	—	
5 to 9 years	877	466	411	393	354	72	56	942	2 071	1 041	1 030	1 032	1 015	—	—	
10 to 14 years	933	469	464	409	409	58	54	896	2 437	1 286	1 151	1 215	1 138	3	5	
15 to 19 years	1 115	561	554	503	505	57	47	931	2 041	1 025	1 015	1 019	1 007	2	2	
20 to 24 years	963	493	470	437	437	23	31	721	1 287	596	701	559	694	3	2	
25 to 29 years	475	238	237	218	218	9	17	424	1 233	584	649	581	641	—	—	
30 to 34 years	421	220	221	182	192	17	28	510	1 174	561	612	556	629	—	—	
35 to 39 years	431	199	233	183	216	14	17	514	1 212	584	620	581	624	—	—	
40 to 44 years	505	242	263	219	248	13	19	628	1 310	625	685	621	690	—	—	
45 to 49 years	544	254	290	235	262	19	25	628	1 353	638	715	634	715	2	3	
50 to 54 years	526	253	273	226	248	17	24	624	1 400	676	724	670	724	4	5	
55 to 59 years	401	207	214	200	211	27	23	642	1 360	644	716	637	729	1	1	
60 to 64 years	593	295	298	266	233	19	25	618	1 424	655	749	644	742	3	3	
65 to 69 years	541	240	301	220	268	30	32	628	1 241	628	692	600	650	2	—	
70 to 74 years	475	216	259	198	231	23	28	515	921	427	494	422	450	—	—	
75 to 79 years	372	155	217	140	183	15	18	407	683	312	371	311	318	—	—	
80 to 84 years	267	100	167	87	137	13	10	273	444	199	245	197	244	—	—	
85 years and over	217	75	142	47	135	8	7	142	263	111	132	111	131	—	—	
Under 15 years	3 075	1 534	1 491	1 365	1 295	215	191	3 227	7 548	3 865	3 683	3 832	3 444	5	9	
15 years and over	2 232	981	1 271	854	1 122	97	107	2 255	4 464	2 054	2 370	2 229	3 505	4	2	
65 years and over	1 872	726	1 056	722	939	84	95	1 955	3 552	1 457	1 995	1 441	1 813	2	1	
Median age	32.5	29.4	35.4	30.2	35.1	21.8	32.6	35.3	34.3	33.0	35.5	33.0	35.3	50.0	42.5	
IRON																
Under 1 year	9 539	4 842	4 697	4 424	4 837	24	18	8 041	434 539	399 421	345 137	334 457	332 141	52 956	39 901	
1 year	160	91	69	91	85	—	—	145	11 248	5 678	5 572	4 423	4 267	1 214	1 231	
2 years	159	86	73	65	73	—	—	156	10 428	5 360	5 060	4 187	3 942	1 137	1 079	
3 years	183	97	86	97	86	—	—	145	10 492	5 337	5 155	4 197	3 922	1 115	1 185	
4 years	175	85	90	93	82	—	—	181	10 428	5 354	5 154	4 197	3 922	1 115	1 185	
5 years	173	88	85	83	85	—	—	142	11 901	5 930	5 918	4 606	4 459	1 344	1 324	
6 years	191	91	100	91	99	—	—	155	12 376	6 388	6 028	4 903	4 419	1 419	1 349	
7 years	172	89	83	83	82	—	—	143	12 873	6 572	6 351	5 051	4 278	1 422	1 441	
8 years	194	105	89	105	89	—	—	157	13 101	6 631	6 470	5 117	4 072	1 476	1 417	
9 years	170	92	78	91	78	—	—	136	12 417	6 084	6 531	5 264	5 076	1 588	1 459	
10 years	189	99	90	99	89	—	—	155	13 881	6 981	6 900	5 350	5 222	1 597	1 647	
11 years	195	104	91	102	91	—	—	180	13 167	6 774	6 293	5 174	4 499	1 556	1 458	
12 years	175	91	84	90	83	—	—	183	13 201	6 742	6 499	5 272	4 933	1 424	1 487	
13 years	177	90	87	83	86	—	—	179	12 573	6 420	6 274	5 104	4 818	1 345	1 449	
14 years	165	93	102	92	100	—	—	158	12 583	6 412	6 171	5 033	4 843	1 339	1 293	
15 years	167	91	76	89	78	—	—	179	12 116	6 125	5 990	4 838	4 544	1 361	1 340	
16 years	184	110	74	107	74	3	—	160	11 439	5 735	5 754	4 529	4 287	1 164	1 119	
17 years	150	71	79	73	83	1	—	151	11 197	5 755	5 451	4 442	4 226	1 039	1 124	
18 years	115	67	48	46	47	1	—	125	10 615	5 044	5 565	4 112	4 071	920	1 237	
19 years	120	67	53	50	57	1	—	127	10 423	4 929	5 410	4 021	3 822	1 232	1 232	
20 years	100	39	61	39	67	—	—	75	9 343	3 197	3 592	3 132	4 074	726	1 034	
21 years and over	6 021	2 835	3 185	2 317	2 148	10	10	4 924	527 502	135 974	221 528	157 947	187 227	25 805	36 737	
Under 5 years	851	422	419	428	417	3	1	732	53 078	26 915	26 172	20 921	20 111	5 799	5 899	
5 to 9 years	920	465	435	463	433	—	—	727	63 698	32 390	31 279	24 921	24 072	7 239	6 990	
10 to 14 years	931	477	454	472	449	4	2	856	65 817	33 400	32 212	25 932	24 347	7 319	7 039	
15 to 19 years	746	393	353	355	349	7	4	770	53 109	28 845	28 243	21 585	21 411	5 104	5 630	
20 to 24 years	599	296	303	293	321	—	—	357	51 437	27 553	29 907	19 628	24 022	3 200	4 700	
25 to 29 years	464	239	225	224	224	—	—	354	48 451	22 456	23 975	16 912	19 784	3 317	4 009	
30 to 34 years	475	240	235	229	253	1	2	363	37 648	18 416	19 232	15 372	15 591	2 880	3 471	
35 to 39 years	456	245	211	244	209	—	—	477	35 995	17 302	18 693	14 520	14 999	2 690	3 446	
40 to 44 years	480	227	233	224	232	1	—	435	39 729	19 670	20 059	15 743	16 432	2 875	3 488	
45 to 49 years	426	213	223	211	222	2	—	522	39 417	19 112	20 325	16 167	17 333	2 333	3 185	
50 to 54 years	505	242	263	239	252	2	1	450	34 839	16 200	16 639	13 912	15 872	2 299	2 701	
55 to 59 years	507	256	246	246	241	—	—	451	34 817	16 585	17 052	12 499	14 759	2 007	2 235	
60 to 64 years	523	245	273	253	291	—	—	429	29 554	12 735	15 824	10 964	13 700	1 694	1 933	
65 to 69 years	454	212	242	202	242	3	—	415	23 923	9 937	14 016	8				

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IN THE
SUPREME COURT OF THE UNITED STATES

TERM, 1979

No. 78-5995

ORIGINAL COPY

TOMMY L. HUNT,

Petitioner,

v.

STATE OF MISSOURI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MISSOURI COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION

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10

I N D E X

Citations	1
Statement of the Case	2
Reasons for Denying the Writ	3
Conclusion	6
Appendix	8

CITATIONS

CASES:

Duren v. Missouri, ___ U.S. ___, 99 S.Ct. 664, ___ L.Ed.2d ___ (January 9, 1979)	2, 3, 4
State v. Duren, 556 S.W.2d 11 (Mo. banc 1977)	3
State v. Nevels, 571 S.W.2d 736 (Mo.Ct.App. at K.C. 1978)	2
Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975)	1

STATUTES:

Article I, Section 22B, Missouri Constitution	3
Section 497.140, RSMo 1969	2
Section 494.031(2), RSMo Supp. 1975	3

IN THE
SUPREME COURT OF THE UNITED STATES

TERM, 1979

No. 78-5995

TOMMY L. HUNT,

Petitioner,

v.

STATE OF MISSOURI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MISSOURI COURT OF APPEALS

STATEMENT OF THE CASE

Petitioner was tried in March, 1977, in the Circuit Court of Jackson County, Missouri, on charges of kidnapping and sodomy. In the trial of this cause, petitioner filed a timely motion to quash the jury panel based on the allegation that he was denied a fair cross-section of the community in his jury panel due to the automatic exemption of women who chose to opt off jury service, contra Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975), and the Sixth and Fourteenth Amendments to the United States Constitution. Evidence supporting this allegation was introduced via a stipulation regarding the statistics of Jackson County's jury wheel for the months January through June, 1976. Petitioner's motion was overruled. Verdicts of guilty were returned and petitioner was sentenced to serve two years on the kidnapping charge and five years on the sodomy charge, said sentences to run concurrently.

Subsequent to trial, petitioner filed a timely motion for new trial raising the above allegation. This motion was overruled. Petitioner's conviction was affirmed by the Missouri Court of Appeals, Kansas City District, on July 31, 1978. The motion for rehearing was overruled on August 28, 1978, and petitioner's application to transfer to the Missouri Supreme Court was denied on October 10, 1978, making the Missouri Court of Appeals' decision the final judgment in this cause. Petitioner raised the above issue on appeal, and this allegation of error was overruled by the Missouri Court of Appeals.

REASONS FOR DENYING THE WRIT

By presenting evidence on the composition of Jackson County's 1976 jury wheel but failing to do so as to the 1977 wheel, from which petitioner's jury was drawn, petitioner has failed to make a prima facie case of underrepresentation under the three-pronged test enunciated by this court in Duren v. Missouri, ____ U.S. ____, 99 S.Ct. 664, ____ L.Ed.2d ____ (January 9, 1979):

"In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show: (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair, and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process." 99 S.Ct. at 668.

In the instant case, petitioner's trial was held in 1977, which meant that his jury was selected from a panel drawn from the 1977 Jackson County jury wheel. State v. Nevels, 571 S.W.2d 736, 738 (Mo.Ct.App. at K.C. 1978); Section 497.140, RSMo 1969. Thus, petitioner's reliance on 1976 statistics regarding the

Jackson County jury wheel failed to establish that the representation of women in 1977 venires was not fair and reasonable in relation to the number of women in the community.

In Duren v. Missouri, supra, in the face of statistical evidence which demonstrated that more than half of the persons in the community were female, and that the Jackson County jury venires for 1976 averaged approximately 15% female, this Court concluded that the petitioner had met the prima facie test, Duren v. Missouri, supra, 99 S.Ct. at 669, and consequently ruled that "such systematic exclusion of women that results in jury venires averaging less than 15% female violates the Constitution's fair-cross-section requirement". Id., 99 S.Ct. at 666. Absent statistical evidence that the 1977 Jackson County jury wheel resulted "in jury venires averaging less than 15% female" or that the proportion of women available for jury service was "not fair and reasonable in relation to the number of such persons in the community", petitioner has not met the prima facie test set out in Duren. Article I, Section 22B and §494.031(2), RSMo Supp. 1975, were not ruled facially unconstitutional by this court in Duren v. Missouri, supra. Hence this petition for a writ of certiorari should be denied because petitioner has failed to present evidence warranting relief. Although the Missouri Court of Appeals in its opinion in this cause at 570 S.W.2d 777 stated that the issue was not presently "an open question in Missouri" due to State v. Duren, 556 S.W.2d 11 (Mo. banc 1977), it did so "assum[ing] that appellant's contention has been preserved". Id. at 778. Petitioner's contention was clearly not preserved due to the lack of factual support for his allegation.

Further, respondent submits that the petition for the writ of certiorari should be denied because the specific issue in this cause is now before the Missouri Court of Appeals, Western District, in numerous cases (State v. Arthur Buford, No. 29658;

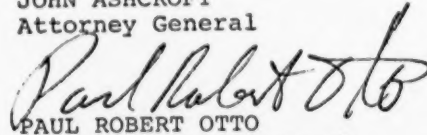
State v. Jerome R. Barnett, No. 29767; State v. Christopher D. Powell, No. 30037; State v. John Coleman, No. 30043; State v. Leonard A. Donahue, No. 30315; State v. Robert C. Mountjoy, No. 29532; State v. William J. Williamson, No. 30342). Respondent submits that the issue of preservation in cases involving venires for which no statistics were presented to the trial court is a matter of state procedure and should be decided by a Missouri forum. In several cases involving issues identical to that in this cause, the Missouri Supreme Court has denied out-of-time applications to transfer to the Supreme Court, but has done so "without prejudice to movants' right to move for recall of the mandate and for further relief in the Missouri Court of Appeals, Western District". State v. Frank J. Clark, No. 61148, March 15, 1979; State v. Leon Nevels, No. 61043, March 15, 1979. Thus, the petitioner in this cause can move for recall of the mandate in the Missouri Court of Appeals, and the issue of preservation may be decided in light of this Court's decision in Duren. It should be noted that at the time the opinion was rendered in this cause by the Missouri Court of Appeals, Duren v. Missouri, supra, had not yet been decided by this Court, and thus the Court of Appeals was bound by the Missouri Supreme Court's decision in State v. Duren, supra. Because of the apparently controlling effect of State v. Duren, the Missouri Court of Appeals did not reach the preservation issue in this case or others like it. Respondent submits that the Missouri Court of Appeals should now do so.

CONCLUSION

WHEREFORE, respondent respectfully requests this Court to deny the petition for writ of certiorari to the Missouri Court of Appeals.

Respectfully submitted,

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